

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
601 New Jersey Avenue, N.W., Suite 9500
Washington, DC 20001

January 10, 2006

NATIONAL CEMENT COMPANY	:	CONTEST PROCEEDING
OF CALIFORNIA, INC.,	:	
Contestant	:	Docket No. WEST 2004-182-RM
	:	Citation No. 6361036; 02/09/2004
TEJON RANCH CORP,	:	
Intervenor	:	
	:	
v.	:	
	:	
SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Lebec Cement Plant
Respondent	:	Mine ID: 04-00213
	:	

DECISION ON REMAND

Before: Judge Feldman

This contest matter concerns Citation No. 6361036 that was issued for an alleged violation of the Secretary of Labor's ("the Secretary's") mandatory safety standard in 30 C.F.R. § 56.9300(a) that requires the construction of berms or guardrails on the banks of roadways where significant drop-offs exist. The citation involves a private paved 4.3 mile long two-lane road, beginning at State Route 138 in northern Los Angeles County, and ending at the entrance to National Cement Company of California, Inc.'s ("National Cement's") Lebec Plant. National Cement, the non-exclusive easement grantee, and Tejon Ranch Corporation ("Tejon"), as grantor and intervenor, assert that the private road is not subject to the jurisdiction of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2000) ("Mine Act").

The initial decision in this matter granted the Secretary's motion for summary decision and determined the entire 4.3 mile long private access road to the Lebec Plant was subject to Mine Act jurisdiction because the road was used predominately by mine related vehicles. 27 FMSHRC 84 (Jan. 2005) (ALJ). The Commission reversed and remanded, holding that only the segment of the private roadway over which National Cement has exclusive use is a "coal or other mine" as contemplated by section 3(h)(1) of the Mine Act. 30 U.S.C. § 802(h)(1). 27 FMSHRC 721 (Nov. 2005). Consequently the Commission directed that I determine the point on the road "... beyond which traffic authorized by Tejon but unrelated to National Cement's facility ceases." *Id.* at 735.

On December 15, 2005, the parties filed a joint stipulation resolving all issues of fact concerning the identification of any portion of the road beyond which National Cement has exclusive use. The stipulation states:

The Secretary, National Cement and Tejon hereby agree and stipulate that no segment of the road between State Highway 138 and the entrance to the cement plant is used exclusively by National Cement and its customers.

ORDER

Consistent with the Commission's remand, in light of the joint stipulation reflecting that National Cement lacks exclusive use over any portion of the private roadway, **IT IS ORDERED** that Citation No. 6361036 **IS VACATED** for lack of Mine Act jurisdiction.

Jerold Feldman
Administrative Law Judge

Distribution: (Certified Mail)

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